

FBI Probe Reminiscent of Helms Case

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When Attorney General Griffin B. Bell raised the "national security" flag last week as a concern in the sensitive investigation of FBI "black-bag" jobs, he seemed to be trying to keep alive an issue even his closest aides had difficulty accepting.

Public statements such as that over the past several months convinced the five-member task force of Justice Department attorneys investigating the case that Bell was undermining their efforts and had no intention of pursuing further prosecutions, according to sources familiar with the situation.

As a result of the dispute, the five attorneys asked last week to be taken off the case. And in the aftermath the same kinds of alarms about "double standards" of justice, which were raised in the criminal case against former Central Intelligence agency Director Richard Helms, were sounded again.

Justice Department officials close to Bell said in recent interviews that there "probably will be more prosecutions" of FBI officials responsible for illegal break-ins, wiretaps and mail openings directed at radical fugitives in the early 1970s.

This is likely soon, because statutes of limitations on some targets of the investigation will run out, early next year.

One official said "alternatives" to indictments, such as administrative discipline, also will be examined with a likely outcome being some combination of the two.

"The solution won't be just to drop the Kearney case," said one official in reference to the pending trial of former FBI supervisor John J. Kearney, the only official charged so far. "But maybe it's not always necessary to prosecute to make the point."

"The point," as it was in the Helms case, is to make it clear that law enforcement officials are not above the law, he said.

But again, as it was with Helms, Bell says he has had to wrestle with other concerns: the effect of prosecutions on the agency involved and the possibility that national secrets might somehow be disclosed at a trial.

Helms was allowed to plead no contest to charges of failing to testify fully to the Senate about covert CIA operations in Chile. A fear that possible disclosure of intelligence secrets might force the government to abort the trial was a consideration in allowing the lesser plea, Bell has said.

Although Bell raised the national security concern in the FBI case too in

News Analysis

a discussion with reporters last week, none of his top assistants says he believes it is a valid consideration.

Benjamin R. Civiletti, head of the Criminal Division, and the nominee to move up to deputy attorney general, has said, "The risks to national security in this [the Kearney] case were ephemeral."

Another official close to Bell said the Attorney General voiced that concern because the judge in the Kearney case had ruled that his defense attorney, Edward Bennett Williams, could have access to a wide range of classified FBI material.

Williams, who was also Helms' attorney, is thought to be seeking evidence to show that the wiretaps and mail openings were justified because the Weather Underground was somehow backed by a foreign power.

To some, Bell seems to be looking for a way out of the FBI investigation by even mentioning such "ephemeral" issues. Some Justice attorneys have made snide comments about the bureau's having co-opted the Attorney General.

Rep. Ted Weiss (D-N.Y.) called last week for hearings on the task force withdrawal, saying Bell's reluctance to approve more indictments was "nothing short of scandalous." He said

the pattern established in the Helms and FBI cases would lead to "a dual system of laws: one for government agents and one for everyone else."

But Bell's discomfort over the FBI investigation is at least understandable when one considers that he has a very personal interest in the effect the investigation has on the FBI. The bureau is, after all, an important part of his Justice Department.

And because Clarence M. Kelley is a lame-duck director and federal judge Frank M. Johnson, the highly praised nominee to succeed him, was forced to withdraw because of illness, Bell has had to assume extra leadership responsibilities for the FBI.

That concern showed in his remarks to reporters last week while discussing his search for a new successor to Kelley. He chastised the press for its continuing interest in past FBI abuses. "There's nothing I can do about all those things in the past," he said. "Let's move forward."

He noted that he had been depending on Johnson to help bring about a renewed respect for and confidence in

the FBI. "I really thinking about this a lot," he said.

Some attorneys in the department say this worry about the effect of the investigating on the bureau is the very reason for a special prosecutor to be appointed to handle the sensitive inquiry.

Justice officials who have been involved in the case, including former Assistant Attorney General J. Stanley Pottinger, rejected this argument, however.

Pottinger, who headed the investigation for about a year before leaving office with the change in administrations, said yesterday that he felt Bell should consider the effect further prosecutions would have on the FBI.

"I feel for the Attorney General's dilemma," he said. "What we're talking about is a policy of accountability. The issue is not sending a bunch of bureau agents to jail. And criminal indictments are an awkward way of reaching that accountability."

"But if that's (indictments) not the only way, a better way ought to be established, and it ought to be done."